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jurisdiction of the European Commission (Art 347). Similar commissions are given control of the Elbe, the Oder, and the Niemen (Arts. 340-342). As regards the Rhine, the Central Commission (riparian) provided for by the Convention of Mannheim of 1868 is replaced by one of nineteen members, representing Holland, Switzerland, the German riparian states, France, Great Britain, Italy, and Belgium (Art. 355). Thus it appears that the policy of administration advocated by Mr. Kaeckenbeeck was rejected by the Conference of Versailles, whether wisely or not remains to be seen.

*Orville W. Wood*

A TREATISE ON FEDERAL TAXES. By HENRY CAMPBELL BLACK. Fourth Edition, Kansas City: VERNON LAW BOOK COMPANY. 1919. pp. xxxi, 704.

This fourth edition is built on the same model as its predecessors, with such variations as have been rendered necessary by the recent amendments and additions to the federal statutes. Mr. Black's contribution is that of the faithful digester and compiler. The limitations which he imposes on himself are illustrated by his treatment of the war profits and excess profits tax in chapter xii. After stating that the law of 1918 is so different from that of 1917 that "practically all the rulings and regulations made for carrying into effect the earlier act have been superseded and rendered inapplicable," Mr. Black adds: "At present, therefore, little more can be given in this work than the text of the new act" (page 337). The creative impulse in the author is kept in leash. If the courts or the treasury officials have passed on a point, Mr. Black tells us succinctly what has been thus decided. The recital covers many answers to accounting questions as well as to questions of constitutional law and of statutory construction. The result is a convenient compendium which should prove a time-saver to those who have occasion to inquire into the intricacies of the existing federal revenue system.

In addition to being silent in the absence of authority, Mr. Black is docile in its presence. For example, in discussing the constitutionality of including the salaries of federal officials in the general income tax, he says: "As to the President and the federal judges, this is undoubtedly unconstitutional" (page 19). The basis for this affirmation is found in a memorandum submitted to the Attorney General by Chief Justice Taney and his associates, an opinion of the Attorney General supporting the position as to judges in office at the time of the imposition of the tax, and a declaration of Mr. Justice Field to the same effect in his concurring opinion in the Pollock case. Content with this authority, Mr. Black does not analyze the problem. He does not refer to the opinion of Chief Justice Gibson of the Pennsylvania Supreme Court in *Commissioners of Northumberland County v. Chapman*, 8 Rawle 73 (1829). This case holds that the office of President Judge of a judicial district is taxable under a general law taxing "all offices and posts of profit," notwithstanding a prohibition in the state constitution that the com-

pensation of judges "shall not be diminished during their continuance in office." The prohibition in question, says the Chief Justice, "is to be restrained to laws which have such a reduction for their object and not for their consequence." And he adds: "The legislature could not constitutionally retrench a part of a judge's salary under the pretext of assessing a tax on it; but for the *bona fide* purpose of contribution, a reasonable portion of it, like any other part of his property, may be applied to the public exigencies."

The reason of the matter seems to be with Chief Justice Gibson, rather than with Mr. Black and the authorities on which he relies. It would be agreed by all that a discriminatory tax on the salaries of the President and the judges would be an indirect reduction of their compensation. At the other extreme it would be agreed that not every tax which reduces the purchasing power of an official salary is to be regarded as a diminution of it. The excise on the manufacture of tobacco does not reduce a judge's compensation though it may diminish its purchasing power. In the favorite diction of the Supreme Court, the effect on the compensation of such taxation is "indirect." So, too, though there is some difference of degree between the effect of commodity excises and that of the income tax, the latter as well as the former may with good reason be said to have only an indirect effect on the salary received.

Nor does it seem that the inclusion of judicial and presidential salaries in a general income tax is within the mischief intended to be prevented by the constitutional prohibition against their reduction. The object of the prohibition was to safeguard the independence of those within its terms and to enable them to perform their duties without threat of invasion of their purse by a hostile legislature. This object is effectively attained by preventing the direct diminution of the compensation paid, and by forbidding any levy on the judges or the President as members of a specially selected class. Burdens which they are called upon to share in common with all citizens of the country will not threaten their independence or impede the performance of their duties. Their exemption from a burden which is imposed on others improves their relative situation. It is equivalent to an increase in their compensation. With such exemption, their office is pecuniarily more attractive after than before the levy of a general income tax. Those who might be hesitating between wearing the robe or carrying the brief-case because of the difference in the money rewards will find the difference lessened. If exemption from a common burden is in economics equivalent to an enhancement of salary, subjection to that burden is not a diminution thereof. Thus there is no substantial reason for holding that the income tax as levied is a decrease in the official salaries. And, formally, the tax is a revenue measure and not a regulation of salaries.

It may therefore be doubted whether Mr. Black is warranted in accepting without question the authorities which he quotes. The Supreme Court has recently held that taxes on net income are not

taxes on exports or on interstate commerce though the income is derived from the sale of goods to other countries or other states. There is a growing tendency on the part of the Supreme Court to test the constitutional validity of a tax by its practical effect. Seemingly well-established doctrines are being re-examined and subjected to limitations. It is not safe for a text writer to content himself with the role of a recorder of judicial declarations and decisions, if he essays to inform us what the law actually is, in Mr. Justice Holmes' sense of law as "a prophecy of what courts will do in fact." But it is the exceptional author of legal text books who is much more than a recorder and digester.

*Thomas Reed Powell*

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